Supreme Court of the United States

OCTOBER TERM, 1964

No. 116

THOMAS J. CRIDER, PETITIONER

vs.

ZURICH INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

DOCKET ENTRIES

SOUTHERN DIVISION

Docket CA 63-119

Title of Case

THOMAS J. CRIDER

vs.

ZURICH INSURANCE COMPANY, a corporation

BASIS OF ACTION: Suit to enforce collection of judgment in the sum of $10,500.00 and $100.00 costs, recovered by plaintiff against his employer, Lawler Construction Co., in the Circuit Court for the Ninth Judicial Circuit of Alabama—claims defendant insured Lawler Construction Co. against liability for injuries to its employees, etc.

JURY TRIAL CLAIMED: By Plaintiff.

ON March 14, 1962.

Attorneys

For Plaintiff:

J. Terry Huffstutler; Max C. Pope, Levine, Fulford & Gwaltney

For Defendant:

Foster Etheridge, Spain, Gillong & Young

Date 1963	Plaintiff's Account	Received	Disbursed
Mar. 14	Ck - J. Terry Huffstutler	15.00	
Mar. 18	Cr 102411		15.00

[fol. C]

Date 1963	Filings-Proceedings
Mar. 14	Complaint filed—Page 1.
" 14	Summons and complaint issued—del. to Marshal for service
" 27	Summons and complaint returned, executed Mar. 26, 1963 and filed
Apr. 10	Motion of defendant to dismiss and for summary judgment filed—copy served by counsel—Page 4.
" 15	Motion of plaintiff for summary judgment or for judgment on the pleadings filed—copy served by counsel—Page 24.
May 17	Opinion and order of the Hon. H. H. Grooms granting the defendant's motion to dismiss, and dismissing this action at the costs of the plaintiff filed and entered—copies mailed attorneys—Page 26.
June 5	Petition of plaintiff for appeal in forma pauperis filed—copy served by counsel with affidavits of plaintiff in support thereof attached—Page 29.
" 5	Order allowing plaintiff to prosecute his appeal in forma pauperis etc. filed and entered (Allgood)—copies mailed attorneys—Page 34.
" 5	Notice of appeal by plaintiff filed—cert. copy mailed defendant's attorneys—Page 35.
" 5	Appellant's statement of Points filed—copy served by counsel—Page 37.
" 5	Appellant's designation of record on appeal filed—copy served by counsel—Page 38.

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Civil Action No. CA 63-119

THOMAS J. CRIDER, PLAINTIFF

vs.

ZURICH INSURANCE COMPANY, a corporation, DEFENDANT

COMPLAINT—Filed March 14, 1963

[File Endorsement Omitted]

FIRST CAUSE OF ACTION

1. (a) The plaintiff, Thomas J. Crider, is a resident of DeKalb County in the State of Alabama within the jurisdiction of this court, and is over twenty-one (21) years of age.

(b) The defendant, Zurich Insurance Company, is a corporation organized and existing under the laws of the State of Illinois and its principal place of business is Chicago, Illinois.

(c) The amount in controversy in this action, other than interest and costs, exceeds the sum of Ten Thousand Dollars ($10,000.00).

2. Heretofore, on, to-wit, the 11th day of February, 1959, plaintiff, Thomas J. Crider, recovered a final judgment in the amount of Ten Thousand Five Hundred Dollars ($10,500.00) and costs in the amount of One Hundred Dollars ($100.00) against his employer, Lawler Construction Company, Inc., a Georgia corporation, doing business in Alabama, in the Circuit Court for the Ninth Judicial Circuit of Alabama. Said judgment was for loss and damage suffered by plaintiff, Thomas J. Crider, while he was employed by Lawler Construction Company, and performing services within the line and scope of his employment.

3. At the time of the accident, which resulted in the [fol. 2] loss and damage to plaintiff, Lawler Construction Company, Inc., was insured by the defendant against liability for injury to said plaintiff, or any other employee or employees injured while performing duties for his employer within the line and scope of his employment.

4. More than thirty (30) days have passed since said judgment was rendered, and said judgment has not been satisfied.

WHEREFORE, the plaintiff, Thomas J. Crider, prays that this Court enter a final Order and Decree in this cause, ordering the defendant, Zurich Insurance Company, a corporation, to satisfy the judgment referred to above, together with costs and interest accrued at the rate of six per cent (6%) per annum from February 11, 1959, or in the alternative to enter here a judgment in favor of plaintiff, Thomas J. Crider, against said corporate defendant in the amount of Ten Thousand Five Hundred Dollars ($10,500.00), together with costs and interest accrued at the rate of six per cent (6%) per annum from February 11, 1959, in satisfaction of the judgment of said plaintiff against the said Lawler Construction Company, Inc., or for such other appropriate relief as the Court may decree.

SECOND CAUSE OF ACTION

1. Plaintiff refers to and adopts here the averments in paragraph 1, (a), (b), and (c) in the First Cause of Action.

2. Heretofore, on, to-wit, the 11th day of July, 1956, plaintiff, Thomas J. Crider, was injured while performing duties for his employer, Lawler Construction Company, Inc., a Georgia corporation, doing business in Alabama, within the line and scope of his employment in DeKalb County, Alabama.

3. At the time of said injury, the said Lawler Construction Company was insured against liability for the injury of plaintiff or any other employee or employees injured while performing duties for said employer, Lawler

Construction Company, within the line and scope of his [fol. 3] employment, and said liability was insured by a contract of insurance issued by the defendant. The plaintiff was a third party beneficiary under said contract of insurance.

4. The plaintiff here adopts paragraph 2 of the First Clause of Action.

5. The defendant has breached its said contract by failing and refusing to pay or satisfy the said judgment against Lawler Construction Company, all to plaintiff's damage.

WHEREFORE, the plaintiff, Thomas J. Crider, claims judgment of the defendant in the amount of Ten Thousand Five Hundred Dollars ($10,500.00), together with costs and interest accrued at the rate of six per cent (6%) per annum from February 11, 1959, in this cause.

J. TERRY HUFFSTUTLER
First National Bank Building
Birmingham 3, Alabama

and

LEVINE, FULFORD & GWALTNEY
508-14 Frank Nelson Building
Birmingham 3, Alabama

By: /s/ Max Pope
ATTORNEYS FOR PLAINTIFF

The Plaintiff demands a trial by jury.

J. TERRY HUFFSTUTLER

and

LEVINE, FULFORD & GWALTNEY

By: /s/ Max Pope

[fol. 4]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION

CIVIL ACTION

No. C.A. 63-119

[Title Omitted]

[File Endorsement Omitted]

MOTION TO DISMISS AND FOR SUMMARY JUDGMENT—
Filed April 10, 1963

Comes now the defendant, Zurich Insurance Company, a corporation, and moves the Court to dismiss this action and for grounds therefor assigns the following:

1. For that this Court lacks jurisdiction over the subject matter of this suit, and in support of said ground says as follows:

Defendant avers that the Judgment described in plaintiff's complaint wes rendered by the Circuit Cour of DeKalb County, Alabama, in Case No. 590. A true and correct copy of the portion of the record in said case, namely, the Company as Last Amended, and the Judgment of Court Awarding Compensation, is attached hereto, marked Exhibit "A" and Exhibit "B", respectively, and made a part hereof as if fully set out herein at this point. Defendant further says that at all times mentioned in said Complaint and on the date of the said Judgment, it was the applicable law of the State of Georgia as contained in the Workman's Compensation Law of that State, Title 114, Chapter 114-706, Georgia Code, Acts of the Georgia Legislature of 1920, page 197; 1937, pages 7 and 43; 1945, page 462; 1956, pages 725 and 726, that:

"If the employer and the injured employee or his dependents fail to reach an agreement in regard to

compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then [fol. 5] the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Further, it is the law of the State of Georgia, Title 114, Chapter 114-305, Georgia Code, Acts of the Georgia Legislature, 1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

"The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one year limit shall not apply."

Further, it is the law of the State of Georgia, Title 114, Chapter 114-706, Georgia Code, that:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State, and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that the Circuit Court of DeKalb County, Alabama, wherein the Judgment described in plaintiff's complaint was obtained, was without jurisdiction of the subject matter of the complaint as last amended for that the sole method of claiming compensation under the Georgia Workmen's Compensation Act is by the filing of a claim with the Georgia State Board of Workmen's Compensation within one year from the date of the accident [fol. 6] and that only the State Board of Workmen's Compensation of the State of Georgia had jurisdiction to award the plaintiff workmen's compensation under the Workmen's Compensation Law of the State of Georgia, and the defendant avers that the plaintiff did not file a

claim with the Georgia State Board of Workmen's Compensation within one year after the accident described in the Complaint as Last Amended hence, the Judgment of the Circuit Court of DeKalb County, Alabama mentioned in plaintiff's complaint and made the basis of this suit is null and void in that the Circuit Court of DeKalb County, Alabama did not have jurisdiction of the subject matter of the suit in which the judgment described in the complaint was rendered. Further, defendant says that this Court is without jurisdiction of the subject matter of this suit.

2. For that the complaint fails to state a claim upon which relief can be granted, and in support of said ground says as follows:

Defendant adopts all of the averments of ground one of said motion except the first paragraph thereof and adds the following:

Defendant says that the Workmen's Compensation Law of the State of Georgia which was made the basis for the recovery in the Judgment mentioned in the plaintiff's complaint provides for the enforcement of its provisions to an Administrative Board, the Georgia State Board of Workmen's Compensation and that the only remedy afforded by the said Compensation Act is by an original proceedings before the Georgia State Board of Workmen's Compensation; that the jurisdiction of the Georgia State Board of Workmen's Compensation of claims arising under the Georgia Compensation Law is exclusive and that neither the United States Court nor the Circuit Court of DeKalb County, Alabama nor any other tribunal than the Georgia State Board of Workmen's Compensation had jurisdiction of it. Plaintiff's sole and exclusive remedy was before the Georgia State Board of Workmen's Compensation and that the Circuit Court of DeKalb County, Alabama lacked jurisdiction of the subject matter of the suit wherein plaintiff's Judgment was entered and the Judgment is null and void. Defendant says that said Judgment mentioned in plaintiff's complaint is null and void and, therefore, there is no claim upon which relief can be granted.

[fol. 7] The Defendant asks that the Court consider its Motion to Dismiss as a Motion for Summary Judgment and moves for a summary judgment in favor of the Defendant.

/s/ Foster Etheredge
FOSTER ETHEREDGE
Attorney for Defendant

Of Counsel:

Spain, Gillon & Young
First National Building
Birmingham 3, Alabama

CERTIFICATE OF SERVICE
[Omitted in Printing]

[fol. 8] EXHIBIT A TO MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

IN THE CIRCUIT COURT OF
DE KALB COUNTY, ALABAMA

No. 590

THOMAS J. CRIDER, PLAINTIFF

vs.

A.H. LAWLER CONSTRUCTION COMPANY, INC.,
a Corporation, DEFENDANT

AMENDED COMPLAINT

Now comes the plaintiff and, with leave of the Court first had and obtained, amends his complaint heretofore filed in this cause as follows:

1. By adding the following count:

COUNT A: Plaintiff claims of the defendant benefits under the workmen's compensation laws of Georgia due and owing under the following statement of facts:

On July 11, 1956, the relation of employer and employee or master and servant, existed between defendant, A. H. Lawler Construction Company, Inc., a Georgia corporation, doing business in Alabama; and plaintiff and defendant were subject to the workmen's compensation laws of Georgia; and, while so employed and engaged in the business of defendant, and while acting within the line and scope of his employment with said defendant, plaintiff suffered an accident, which arose out of and in the course of said employment. As a proximate result of said accident, plaintiff has been totally and permanently disabled. A controversy has arisen as to the benefits to be paid under the workmen's compensation laws of Georgia. Plaintiff's name is Thomas J. Crider, and he resides at Valley Head, Alabama. The defendant's name is A. H. Lawler Construction Company, Inc., a foreign corporation, whose address is Perry, Georgia.

At the time of the said accident, on, to-wit, July 11, 1956, plaintiff was assisting another employee of defend-

ant in the repair of a bulldozer belonging to defendant, at or near Valley Head, DeKalb County, Alabama, and, while plaintiff was thus engaged in assisting in said repairs of said bulldozer, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was permanently injured; and he suffered numerous other injuries.

Filed February 10, 1959, Herbert G. Tate, Clerk

[fol. 9] Plaintiff avers that defendant, A. H. Lawler Construction Company, Inc., had prompt and immediate notice of said accident but that said defendant has failed or refused to pay any of the medical or hospital expenses of plaintiff, and said defendant has not paid plaintiff any benefits whatsoever under the workmen's compensation laws of Georgia.

Plaintiff avers that, at the time of the said injuries, he was receiving wages in the sum of not less than $40.00 a week. Plaintiff further avers that he is totally and permanently disabled and that, as a proximate result, he has not been able to work since the date of said injuries to the present date.

WHEREFORE, plaintiff claims of the defendant such benefits as he is entitled to receive under the workmen's compensation laws of Georgia.

2. By striking Counts 1, 2 and 3 of the complaint heretofore filed in this cause.

3. By waiving the demand for a jury trial.

/s/ J. Terry Huffstutler
J. TERRY HUFFSTUTLER
Attorney for Plaintiff

[fol. 10] EXHIBIT B TO MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

IN THE CIRCUIT COURT OF
DE KALB COUNTY, ALABAMA

No. 590

THOMAS J. CRIDER, PLAINTIFF

vs.

A. H. LAWLER CONSTRUCTION COMPANY, INC.,
a Corporation, DEFENDANT

JUDGMENT OF COURT AWARDING COMPENSATION

This day came the plaintiff, Thomas J. Crider with his attorney, J. Terry Huffstutled; and the defendant, A. H. Lawler Construction Company, Inc., a corporation, failing to appear; (the Court having granted the request of the withdrawal as attorney for the defendant made by Hon. W. M. Beck and the Court further being satisfied that defendant was notified of the withdrawal of representation by Hon. W. M. Beck); and after hearing the evidence on the amended complaint of plaintiff, the Court is of the opinion that the plaintiff is totally and permanently disabled as a result of the injuries sustained while acting within the line and scope of his employment for the defendant, and it is the judgment of the Court, that compensation be and the same is hereby awarded to the plaintiff in the sum of Ten Thousand Dollars ($10,000.00) and the further sum of Five Hundred Dollars ($500.00) for medical expenses.

It is, therefore, considered, ordered and adjudged by the Court that the plaintiff have and recover from the defendant the said sum of Ten Thousand Five Hundred Dollars ($10,500.00) in one lump sum, together with costs in this behalf expended, for all of which execution may issue.

It is further considered and ordered by the Court, and it is the judgment of the Court, that the attorney's fee of J. Terry Huffstutler, for the plaintiff, be and the same is hereby fixed at Three Thousand Five Hundred Dollars ($3,500.00).

The foregoing order and judgment entered this 11 day of February, 1959.

/s/ [Illegible]
Circuit Judge

Filed February 11, 1959, Herbert G. Tate, Clerk

[fols. 11-12] * * *

[fol. 13] SUMMONS AND COMPLAINT

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT OF ALABAMA

STATE OF ALABAMA)
)
DEKALB COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon A. H. LAWLER CONSTRUCTION COMPANY, INC., a corporation, to appear before the Circuit Court to be held for said County, at the place of holding the same, Fort Payne, within thirty days from service of this process, then and there to answer the complaint of THOMAS J. CRIDER.

Witness my hand and seal this 3 day of July, 1957.

/s/ Willard Cole
Clerk of the Circuit Court of
DeKalb County, Alabama.

COMPLAINT

IN THE CIRCUIT COURT OF DEKALB COUNTY, ALABAMA

No. 590

THOMAS J. CRIDER, PLAINTIFF

vs.

A. H. LAWLER CONSTRUCTION COMPANY, INC., a Corporation, DEFENDANT

COUNT 1:

Plaintiff claims of the defendant benefits under the Workmen's Compensation Laws of Alabama due and owing under the following statement of facts: On July 11, 1956, the relation of employer and employee, or master and servant, existed between defendant, A. H. Lawler Construction Company, Inc., a foreign corporation, doing business in Alabama, and plaintiff; and defendant and plaintiff were subject to the Workmen's Compensation Laws of Alabama; and, while so employed and engaged in the business of the defendant, and while acting within the line and scope of his employment with said defendant, plaintiff suffered an accident, which arose out of and in the course of said employment. As a proximate result of said accident, plaintiff has been totally disabled. A controversy has arisen as to the benefits to be paid under the Workmen's Compensation Laws of Alabama.

Plaintiff's name is Thomas J. Crider, and he resides at Valley Head, Alabama. The defendant's name is A. H. Lawler Construction Company, Inc., a foreign corporation, whose address is Perry, Georgia.

[fol. 14] At the time of the said accident, on, to-wit, July 11, 1956, plaintiff was assisting another employee of defendant in the repair of a bulldozer belonging to defendant, at or near Valley Head, DeKalb County, Alabama, and, while plaintiff was thus engaged in assisting in said repairs of said bulldozer, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proxi-

mate consequence thereof, plaintiff was injured as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was permanently injured; and he suffered numerous other injuries.

Plaintiff avers that defendant, A. H. Lawler Construction Company, Inc., had prompt and immediate notice of said accident but that the said defendant has failed or refused to pay any of the medical or hospital expenses of plaintiff, and said defendant has not paid plaintiff any benefits whatsoever under the Workmen's Compensation Laws of Alabama.

Plaintiff avers that, at the time of the said injuries, he was receiving wages in the sum of not less than Forty Dollars ($40.00) a week. Plaintiff further avers that he is totally disabled and that, as a proximate result, he has not been able to work since the date of said injuries to the present date.

WHEREFORE, plaintiff claims of the defendant such benefits as he is entitled to receive under the Workmen's Compensation Laws of Alabama. He prays that notice may be given the defendant and that hearing may be had, all in accordance with the laws and rules of this Honorable Court.

COUNT 2:

Plaintiff claims of the defendant the sum of One Hundred Fifty Thousand Dollars ($150,000.00) as damages for that heretofore, on, to-wit, July 11, 1956, the defendant was engaged in the construction of dirt roads at or near Valley Head, DeKalb County, Alabama, and the plaintiff avers that, at said time and place, he was a casual employee of the defendant. And plaintiff avers that, while he was acting within the line and scope of his

employment as such casual employee of the defendant, he was assisting another employee of defendant, namely, Mack B. Walker, who was then and there acting within the line and scope of his said employment, to repair a bulldozer belonging to the defendant, and then and there the said Mack B. Walker, while acting within the line and scope of his employment as a servant, agent or employee of the defendant, allowed or caused the A-frame and blade of the said bulldozer to fall upon plaintiff and, as a proximate consequence thereof, plaintiff was injured and damaged as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was otherwise injured; he was permanently injured; and plaintiff was put to much trouble, annoyance, inconvenience and great expense in and about procuring doctors and medicines, medical aid and atten- [fol. 15] tion in an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused as a proximate consequence of the negligence of Mack B. Walker, the servant, agent or employee of the defendant, while acting within the line and scope of his employment, in allowing or causing the said A-frame and blade of the said bulldozer to fall upon plaintiff at the time and place and on the occasion aforesaid.

COUNT 3:

Plaintiff claims of the defendant the sum of One Hundred Fifty Thousand Dollars ($150,000.00) as damages for that, heretofore, on, to-wit, July 11, 1956, the defendant was working in the construction of dirt roads at or near Valley Head, DeKalb County, Alabama, and that

plaintiff avers that, at said time and place, he was a casual employee of the defendant. And plaintiff avers that, while he was acting within the line and scope of his employment as such casual employee of the defendant, he was assisting another employee of defendant, namely, Mack B. Walker, who was then and there acting within the line and scope of his said employment, to repair a bulldozer belonging to the defendant. And plaintiff avers that, while he was thus employed and was underneath the said bulldozer assisting to make said repairs, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured and damaged as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was otherwise injured; he was permanently injured; and plaintiff was put to much trouble, annoyance, inconvenience and great expense in and about procuring doctors and medicines, medical aid and attention in an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused by reason of the defects in the condition of the said bulldozer and that the defendant knew of the defects existing in said bulldozer prior to the date plaintiff was injured.

/s/ J. Terry Huffstutler
J. TERRY HUFFSTUTLER,
Attorney for Plaintiff.

PLAINTIFF DEMANDS A JURY TRIAL.

/s/ J. Terry Huffstutler
J. TERRY HUFFSTUTLER
Attorney for Plaintiff.

[fol. 16]

[Duly sworn to by Thomas J. Crider, jurat omitted in printing; (all in italics)]

[fol. 16A]

THOMAS J. CRIDER *vs.* A. F. LAWLER CONST. CO., INC.

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver *only* to addressee (no additional).

☐ Show address where delivered in item 4 below (35¢ additional)

RECEIPT

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. Signature or name of addressee
   A. H. Lawler Const. Co., Inc.
2. Signature of addressee's agent *(agent should enter addressee's name in item 1 above)*
   Irene Lawler Eden
3. Delivery date

[fol. 17]

IN THE CIRCUIT COURT OF DEKALB COUNTY, ALABAMA

Case No. 590

THOMAS J. CRIDER, PLAINTIFF

vs.

A. H. LAWLER CONSTRUCTION COMPANY, INC., a Corporation, DEFENDANT

STATE OF ALABAMA
MONTGOMERY COUNTY

Before me, Jamie L. Pettigrew, a Notary Public in and for said State-at-Large, personally appeared Mary Texas

Hurt, Secretary of State of the State of Alabama, who is known to me and who, being duly sworn, deposes and says that in her official capacity as Secretary of State of the State of Alabama she, on the 19 day of July 1957 sent by registered mail in an envelope addressed as follows:

"Registered Mail—
Return Receipt Requested"

"A. H. Lawler Construction Company, Inc.
Perry, Georgia"

bearing sufficient and proper prepaid postage, a notice bearing her signature and the Great Seal of the State of Alabama in words and figures as follows:

"A. H. Lawler Construction Company, Inc.
Perry, Georgia

You will take notice that on July 19, 1957 the Sheriff of Montgomery County, Alabama, served upon me, in my official capacity, Summons and Complaint and Affidavit in a case entitled: THOMAS J. CRIDER, Plaintiff VS A. H. LAWLER CONSTRUCTION COMPANY, INC., a Corporation, Defendant in the CIRCUIT COURT OF DEKALB COUNTY, ALABAMA, Case No. 590

a true copy of which Summons and Complaint and Affidavit are attached hereto and the said service upon me as Secretary of State of the State of Alabama has the force and effect of personal service upon you, said service being under provisions of Title 7, Section 199(1) of the 1940 Code of Alabama and Supplement thereto.

WITNESS MY HAND and the Great Seal of the State of Alabama this the 19 day of July 1957

/s/ Mary Texas Hurt
MARY TEXAS HURT
Secretary of State"

Enclosures (2)

Affiant further says that the notice above set out which was so mailed in the envelope addressed as above set forth had attached to it a true copy of the Summons and Complaint and Affidavit in the above-styled cause.

Affiant further says that on July 23, 1957 she received the "Return Card" showing RECEIPT by the designated addressee of the aforementioned matter at Perry, Ga. on 7/22/57

/s/ Mary Texas Hurt Garner
Affiant—MARY TEXAS HURT
Secretary of State

Sworn to and subscribed before me, this the 23 day of July 1957

/s/ Jamie L. Pettigrew

Notary Public—State-at-Large
My Commission expires: January 1959

Enclosures—"Return Receipt" and
Copy of Process

cc: Honorable J. Terry Huffstutler
Attorney at Law
1215 1st National Building
Birmingham, Alabama

[fol. 18] IN THE CIRCUIT COURT OF
DEKALB COUNTY, ALABAMA

THOMAS J. CRIDER, Box ...., Valley Head, Alabama,
PLAINTIFF

vs.

A. H. LAWLER CONSTRUCTION CO., INC., a Corporation
Perry, Georgia, DEFENDANT

Serve on:

Secretary of State
State of Alabama
Montgomery, Alabama

Summons and Complaint

[fols. 19-23] * * *

[fol. 24]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. C.A. 63-119

[Title Omitted]

[File Endorsement Omitted]

MOTION FOR SUMMARY JUDGMENT OR JUDGMENT ON THE PLEADINGS—Filed April 15, 1963

Plaintiff moves the court to enter its judgment on the pleadings in favor of the Plaintiff and against the Defendant under and pursuant to the provisions of Rule 12(c), Federal Rules of Civil Procedure, or in the alternative to grant summary judgment for Plaintiff and against Defendant pursuant to Rule 56, and as grounds for said motions, separately and severally, assigns the following:

1. The Circuit Court of DeKalb County, Alabama, in Case No. 590, rendered a final judgment against the Defendant. Said judgment was attached to Defendant's motion to dismiss and marked Exhibit "B". Said judgment was rendered with personal judisdiction of the Defendant as shown on the face of said judgment.

2. Further the Circuit Court of DeKalb County, Alabama, in Case No. 590, rendered the aforesaid final judgment with full jurisdiction over the subject matter. Which said final judgment was based on the Workman's Compensation Law of Georgia as alleged in the amended complaint of Plaintiff which was attached to Defendant's motion to dismiss and marked as Exhibit "A". Said Workman's Compensation Law of Georgia created a cause of action that could be enforced in any State of the Union that could obtain personal jurisdiction over the parties involved.

3. Further the Circuit Court of DeKalb County, Alabama, had the duty to enforce said transitory cause of action under the "Full faith and credit" clause of the [fol. 25] *United States Constitution*, Article IV, Section 1, and 28 U.S.C.A. Sec. 1738.

4. Further the Circuit Court of DeKalb County, Alabama, had the duty under Title 7, Sec. 97 *Code of Alabama* (1940) (Recomp. 1958), to enforce this foreign created transitory cause of action.

5. Further the Circuit Courts of Alabama are courts of general jurisdiction and not of limited jurisdiction.

LEVINE, FULFORD & GWALTNEY

By /s/ Max Pope

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 26]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION

Civil Action No. 63-119

[File Endorsement Omitted]

THOMAS J, CRIDER, PLAINTIFF

vs.

ZURICH INSURANCE COMPANY, a corporation, DEFENDANT

OPINION AND ORDER GRANTING MOTION TO DISMISS—
May 16, 1963

This matter came on for hearing at this time upon the plaintiff's motion for summary judgment and upon the defendant's motion to dismiss.

From the proceedings herein, the following facts appear to be undisputed:

Plaintiff, Thomas J. Crider, while an employee of Lawler Construction Company, Inc., a Georgia corporation, was injured on the 11th day of July, 1956, in DeKalb County, Alabama. Both Crider and Lawler were under and subject to the Workman's Compensation Act of Georgia at the time the former was injured. Crider instituted a suit against Lawler in the Circuit Court of DeKalb County, Alabama, seeing recovery under three counts, the first count being under the Alabama Compensation law and Counts Two and Three being under the common law.

On February 11, 1959, Crider amended his complaint striking all of the original counts and his demand for a jury trial, and added Count A under the Georgia Compensation law. On the following day judgment by default was entered against Lawler for the sum of $10,500, together with costs.

The defendant herein, Zurich Insurance Company, a corporation, was the Workman's Compensation insurer of Lawler. It claims that the Circuit Court of DeKalb County, Alabama, was without jurisdiction of the subject matter, and that this action cannot be maintained against Zurich who is in privity with Lawler, and that the judgment is void.

[fol. 27] The Court has heard oral argument, has considered the briefs and reviewed the authorities, and is of the opinion that the defendant's contention is well taken.

In *Green* v. *J. A. Jones Const. Co.*, 161 F. 2d 359, the Court of Appeals for the Fifth Circuit, held that the Circuit Court of Hinds County, Mississippi, and the United States District Court for the Southern District of Mississippi did not have jurisdiction to award damages under the Georgia Workmen's Compensation Act in an original proceeding filed in the former court and removed to the United States District Court. The Court ruled that the Georgia decisions

> "settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act, Code 1933, is an exclusive one which can

be afforded only by the State Board of Workmen's Compensation in a proceeding brought before it as the statute provides (Sec. 114-103)."

A different situation would be presented if the Georgia Compensation Act vested in the Georgia courts the power to entertain an original suit for workmen's compensation. To permit this original action in the courts of Alabama is to allow an original proceeding in such courts where the same is denied to the courts of Georgia.

Since the DeKalb County Circuit Court did not have jurisdiction of the subject matter, the issue of jurisdiction is open to inquiry and where as here, the record discloses a lack of jurisdiction, the judgment is void. *City of Birmingham* v. *Reed*, 35 Ala. App. 31, 44 So. 2d 240; *Murphy* v. *L. & N.*, 258 Ala. 138, 61 So. 2d 3; *Crump* v. *Knight*, 286 Ala. 601, 56 So. 2d 625; *Freeman* v. *McBroom*, 11 Ala. 943.

A party or his privies may assail such a judgment. *Fife* v. *Pioneer Lumber Co.*, 237 Ala. 92, 185 So. 759; *Cobbs* v. *Norvill*, 227 Ala. 621, 151 So. 576.

[fol. 28] The Court is, thereof, of the opinion that the defendant's motion to dismiss is due to be granted.

It is, therefore, ORDERED, ADJUDGED and DECREED that the defendant's motion to dismiss be and the same is hereby granted, and this action be and the same is hereby dismissed at the costs of the plaintiff.

Oone and Ordered, this the 16th day of May, 1963.

H. H. GROOMS
District Judge

[fols. 29-34] • • •

[fol. 35]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 63-119-S

[Title Omitted]

NOTICE OF APPEAL—Filed June 5, 1963

Name and address of Appellant:

Thomas J. Crider
Mentone, DeKalb County, Alabama

Names and addresses of Appellant's Attorneys:

J. Terry Huffstutler
First National Building
Birmingham 3, Alabama

Levine, Fulford & Gwaltney
Frank Nelson Building
Birmingham 3, Alabama

Concise statement of judgment or orders giving date:

The order of the Court dated May 16, 1963, granting defendant's Motion to Dismiss.

The above named Appellant, by and through his attorneys, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the above stated judgment and orders.

Dated: June 5th, 1963.

J. TERRY HUFFSTUTLER and
LEVINE, FULFORD & GWALTNEY
Attorneys for Appellant
By: /s/ Max Pope

[File Endorsement Omitted]

[fol. 36]

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 37]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 63-119-S

[Title Omitted]

APPELLANT'S STATEMENT OF POINT—Filed June 5, 1963

The appellant, by and through his attorneys, sets forth and assigns the following point upon which he intends to rely on appeal:

1. The Court erred in granting appellee's motion to dismiss and in denying appellant's motion for summary judgment dated May 16, 1963.

J. TERRY HUFFSTUTLER and
LEVINE, FULFORD & GWALTNEY
By: /s/ Max Pope

CERTIFICATE OF SERVICE [omitted in printing]

[File Endorsement Omitted]

[fols. 38-39]

[fol. 40]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20633

THOMAS J. CRIDER

versus

ZURICH INSURANCE COMPANY

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
November 12, 1963

On this day this cause was called, and after argument by Max Pope, Esq., for appellant and Foster Etheredge, Esq., for appellee, was submitted to the Court.

* * * *

[fol. 41]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20633

THOMAS J. CRIDER, APPELLANT

versus

ZURICH INSURANCE COMPANY, APPELLEE

Appeal from the United States District Court of the Northern District of Alabama.

PER CURIAM OPINION—November 21, 1963

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and JOHNSON, District Judge.

PER CURIAM: The decision of the question presented on this appeal is controlled by *Green* v. *J. A. Jones Const. Co.*, 5th Cir. 1947, 161 F. 2d 359. The judgment of the district court is

AFFIRMED.

* * * *

[fol. 42]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20633

D. C. Docket No. 20633

THOMAS J. CRIDER, APPELLANT

versus

ZURICH INSURANCE COMPANY, APPELLEE

Appeal from the United States District Court of the Northern District of Alabama.

Before TUTTLE, Chief Judge, Jones, Circuit Judge, and JOHNSON, District Judge.

JUDGMENT—November 21, 1963

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

November 21, 1963

Issued as Mandate:

[fol.43] * * *

[fol. 44]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 45]

SUPREME COURT OF THE UNITED STATES
No. 1061 Misc., October Term, 1963

THOMAS J. CRIDER, PETITIONER

vs.

ZURICH INSURANCE COMPANY

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—May 25, 1964

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1147 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 735511 1061